

Lourens Wepener Hugo Ackermann

14 January 1934 – Saturday 25 May 2024

Tribute Monday 3 June 2024

Christ Church, Constantia

- 1 I am honoured that the family have asked me to speak about Laurie's professional legacy.
- 2 But I cannot do this without first recording my profound debt to Laurie, and his whole family, especially Denise, for the nurturance, guidance, love and joy they have all given me these last 55 years.
- 3 I met Laurie in 1969 through his younger brother Hugo, who was my schoolmaster at Pretoria Boys' High School. I was sixteen – an ambitious but confused and gauche schoolboy, living in difficult home circumstances.
- 4 Both Hugo's and Laurie's families generously took me under their wing.
- 5 Laurie was a young advocate of 35, building his reputation at the Pretoria Bar. He and Denise took a benevolent interest in my welfare, and Laurie lovingly mentored me throughout my adult life – for we had several life steps in common: Pretoria Boys High, Stellenbosch, Rhodes Scholarship to Oxford, practice at the bar, and judge-work.
- 6 But these steps say nothing about the substance of what Laurie meant in my life.
- 7 Laurie was a kind, considerate and persistently generous and friend and mentor. At Stellenbosch and Oxford, in legal practice and on the Bench, Laurie patiently afforded me encouragement, affirmation, professional guidance and personal counsel.
- 8 In this I was not alone. An important part of Laurie's legacy is a host of protégés – students, law clerks, researchers and others, who have been enriched both personally and professionally by his disinterested commitment to their well-being.
- 9 But Laurie's careful and sometimes dogged nurturance of those he fostered tells also the story of his approach to the law.
- 10 For the law was central to his moral and professional being. It afforded him not merely a distinguished career, but a means of grappling with his own deepest doubts and anxieties, and of determining his moral relation to other people and to society.
- 11 Laurie's deepest and most devout commitments were to Denise and his children, Lisa, Lourens and Tessa – but, alongside and after them, his work as a judge was foremost in his life.
- 12 Of all forms of lawyering, judgeship offers the most practical opportunity to shape the law. This entails constant anxiety, but also constant opportunity.
- 13 For while advocacy entails partisan advancement of one side, judging requires impartially rigorous, principled and truthful decision-making.
- 14 In this, Laurie Ackermann shone brightly – and his death ten days ago offers us an opportunity to publicly affirm his colossal role amongst the architects and builders of our democracy's legal fabric.

- 15 Much of his legacy lies in the profound sweep of the principles he developed as a judge, especially his last nine years in the Constitutional Court.
- 16 As strict as his work habits and outputs were Laurie's views about how a judge should behave – including confidentiality and discretion and personal modesty.
- 17 If this is very abstract, what it meant in practice is that Laurie was privately as fair-minded as he was on the Bench; that he was never loud, brash, indiscreet, intemperate, foul-mouthed (apart from some, very occasional, redeeming private profanities).
- 18 I Some achieve their life goals through lyrical flight. That was not Laurie's path. What he achieved was through grinding daily self-application and, often, long and agonised periods of self-doubt and inner struggle.
- 19 If that makes Laurie sound dour, that is my fault. He was a delightful friend and companion, with a wicked sense of humour, and a font of enormous expertise in wines, which he readily shared.
- 20 He and Denise were married for over 65 years. Laurie adored her, though his adoration was mixed with a measure of prudent awe.
- 21 In fact, we were both (I think) a bit scared of Denise.
- 22 When we shared a meal, she was fierce in excoriating both Laurie and me if we descended into legal gossip, jurisprudential discussion or updates on legal developments.
- 23 This led us to plot occasional private assignations, when we could indulge lavishly in all the excitement of murky legal gossip.
- 24 And – heaven forbid! – we would smoke Camel Light cigarettes – which were severely *verboden* domestically.
- 25 Laurie's impact on the law in South Africa and particularly on our democracy is difficult to overstate.
- 26 As a deeply respected and accomplished senior member of the Pretoria Bar, the apartheid Minister of Justice could not overlook him – and appointed him to the Bench in the early 1980s.
- 27 It was just as Laurie became a judge that I started in practice at the Johannesburg Bar.
- 28 My longest encounter with Laurie as a Judge was traumatic for both of us.
- 29 Instructed by Priscilla Jana, I defended two ANC guerillas in the mid-1980s on capital charges of high treason.
- 30 Laurie was assigned to preside over this trial.
- 31 He was assigned only because an honourable Judge-President, Wes Boshoff, resolved to spread the "political" trials amongst all judges, instead of keeping them confined to a tiny circle of politically reliable judges who could be expected to act harshly against those taking up arms against the iniquities of apartheid.
- 32 The trial was long, and it was impossible for us to communicate in any way, less even to socialise, during it.

- 33 But it was evident to all in court that sitting in judgment on those whose cause Laurie considered fundamentally just created a profound crisis of conscience for him.
- 34 The result of Laurie's anguish was both spectacular and near-revolutionary.
- 35 From the bench – with utter scruple to both his moral conscience and his oath to uphold the laws of apartheid South Africa – Laurie delivered a series of extraordinary judgments: *S v Leepile* (1) to (6).¹
- 36 These six judgments enlarged rules protecting witnesses who refused to testify; reduced the secrecy that, until then, judges regularly afforded state witnesses in trials of ANC fighters; and amplified the media's access in reporting on a "political" trial.
- 37 Because of Laurie's strict propriety, I was naturally not privy to what next happened – Laurie decided, in conscientious anguish, to resign as a judge, at great cost financially to him and Denise, and at acute cost also to his personal relations with many friends and colleagues.
- 38 Instead, he took up the Chair of Human Rights at Stellenbosch University for which, through his friend Julian Ogilvie Thompson, he helped raise the endowment.
- 39 But Laurie's calling was always to judge-work. He loved the rigorous demands of judicial office – the combination of practical human insight and systemic savvy it required, together with the intellectual and academic imperatives of research it required.
- 40 Two years after Nelson Mandela's release from prison in February 1990, Laurie accepted re-appointment to the Bench, under the benign Chief Justiceship of Michael Corbett.
- 41 Two years later, Nelson Mandela became the first President of a democratic South Africa. The Interim Constitution granted him the power to appoint the President of the new Constitutional Court, plus four existing judges.
- 42 It was only natural that Mandela included Laurie amongst the four, together with Richard Goldstone, Tholie Madala, and Ismail Mohammed.
- 43 Over the next eight years, before he reached compulsory retirement on turning 70 in January 2004, Laurie made a founding contribution to the new Court.
- 44 He did so through his judgments, certainly, but also in many, many more ways.
- 45 Amidst many brilliant intellects with profound practical and academic experience, the new Court included a few fire-breathing show-offs.
- 46 Laurie was not a show-off. He instilled in the Court a reverence for the concept of judicial office that made intrinsic the practice of impartiality, independence, propriety, discreteness and integrity.²
- 47 Speaking about Laurie, his beloved colleague, Kate O'Regan, has said:
- His judicial conscience was always one that 'was not too sure that it is right'. In order to be sure, he would, perhaps more than any other judge at the Constitutional Court, read

¹ Including *S v Leepile* (1) 1986 2 SA 333 (W), (2) 1986 (2) SA 346 (W) and (published later) *S v Leepile* 1990 (3) SA 988 (W) and *S v Leepile* (6) 1993 SA 988 (W).

² The charges the Justices of the Court laid against then-Judge-President Hlophe in May 2008 could easily be seen as part of the legacy to the Court of both Arthur Chaskalson and Laurie Ackermann.

widely on the jurisprudence of other countries. He would prepare for oral argument meticulously, and listen carefully to what was argued. He would also listen closely to his colleagues and gnaw at legal problems incessantly till he felt he had found the right way forward.

48 In an exchange after Laurie's death last weekend, Geoff Budlender, who has often argued major cases in that Court over the last thirty years, characterized Laurie's judgeship as "always in search of the principle".

49 Reverting to Kate, she insightfully notes that:

Such a temperament is, although fitting, a painful one for a judge. It is a temperament ordinarily accompanied by modesty, diligence and an ability to listen – all of which Laurie possesses in abundance. Yet make no mistake that when Laurie had set a course, after careful and thorough deliberation, he was implacable in pursuing it."³

50 Laurie's gift was to combine grand principle with meticulous attention to the minutest details of every case in which he sat – not only his own judgments, but those of his colleagues, each of which he treated as his own.⁴

51 Many members of that first Court shared these values – but it was Laurie who embodied them through every fibre of his moral and physical being.

52 In describing his legacy, Sandy Liebenberg, present here today, last week in the Stellenbosch Law School's tribute highlighted the judgment Laurie co-authored with Richard Goldstone in *Carmichele v Minister of Safety and Security* [2001] ZACC 22.

53 Her tribute also features Laurie's internationally recognised breakthrough judgments in queer equality, *National Coalition for Gay and Lesbian Equality v Minister of Justice* [1998] ZACC 50 abolishing the criminal offences of same-sex sexuality, and *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* [1999] ZACC 17, establishing same-sex spousal rights.

54 Laurie was one of the straightest people I knew – which is perhaps precisely why he had not the slightest nuance of difficulty with same-sex sexuality and diversity in gender identity and expression.

55 While himself conspicuously unqueer, he was profoundly empathetic to the unjust stigmatisation of queer people.

³ C O'Regan "From Form to Substance: The Constitutional Jurisprudence of Laurie Ackermann" *Dignity, Freedom and the Post-Apartheid Legal Order* 1 at 1-2.

⁴ When I started at the Constitutional Court, Arthur Chaskalson once remarked over lunch with Albie Sachs – with loyal if somewhat rueful admiration – that Laurie let no judgment pass across his desk unless he had studied, unpicked and checked every sentence, every reference and every conclusion. I asked, uninnocently, whether this didn't mean that Laurie could be a pain in the butt – at which Albie asked how I was going to translate that into Latin.

56 Take this memorable, internationally impactful, passage from his judgment *NCGLE v Minister of Home Affairs*:

"Gays and lesbians in same-sex life partnerships are as capable as heterosexual spouses of expressing and sharing love in its manifold forms including affection, friendship, eros and charity;

They are likewise as capable of forming intimate, permanent, committed, monogamous, loyal and enduring relationships; of furnishing emotional and spiritual support; and of providing physical care, financial support and assistance in running the common household;

They are individually able to adopt children and in the case of lesbians to bear them;

...

Finally, and of particular importance for ... this case, they are capable of constituting a family, whether nuclear or extended, and of establishing, enjoying and benefiting from family life which is not distinguishable in any significant respect from that of heterosexual spouses."⁵

57 These words pointed the Court, six years later, to its judgment requiring Parliament to grant marriage equality to same-sex unions.

58 To this, I would add, as one of the high points of Laurie's intellectual and judicial career, the judgment in *First National Bank v SARS* [2002] ZACC 5,⁶ in which he wrestled, luminously, with the difficult concept of property rights in the Bill of Rights.

59 These judgments were profound in both their human and jurisprudential insights.

60 Laurie's final contribution to the law was his philosophical treatise on human dignity in his monograph published in 2012.⁷

61 Written in the eight years after his retirement, it was and remains a monumental exploration of the philosophy and practice of human dignity – and was rightly praised in reviews in numerous scholarly journals.

62 Laurie died at 90. He lived a rich, challenged and fulfilled life, accompanied through more than two-thirds of it by the enduring love of his life, Denise, whose intellectual and academic attainments equalled his own – and who intellectually and emotionally and socially kept him on his toes.

63 He adored Denise and his generous love flowed beyond her, first to his family and then to his intimate circle and beyond it, to humankind.

⁵ At para 53.

⁶ Which I drew on heavily in *Jordaan v City of Tshwane Metropolitan Municipality* [2017] ZACC 31.

⁷ *Human Dignity: Lodestar for Equality in South Africa*.

- 64 It is a perilous time for our democracy. Monsters of avarice and duplicity and of rampant criminal syndicalism seek to beset us.
- 65 If our Constitution and the rule of law have the resilience to sustain these onslaughts, it will be in part because of the commitment to truth and reason, and principled effort, that Laurie Ackermann's life and work embodied.

Justice Edwin Cameron